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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider the
Adoption of a General Order and Procedures
to Implement the Digital Infrastructure and
Video Competition Act of 2006.

R.06-10-005

OPENING COMMENTS OF

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CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
GLOBAL VALLEY NETWORKS, INC. (U 1008 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
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PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**

ON PHASE II ISSUES

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May 31, 2007

I. INTRODUCTION.

Pursuant to the Assigned Commissioner's Ruling dated May 7, 2007 ("ACR"), Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the "Small LECs") submits these opening comments on Phase II issues identified in the ACR that pertain to open issues relative to the implementation of the Digital Infrastructure and Video Competition Act of 2006 ("AB 2987" or "DIVCA").

Of the topics identified in the ACR, the Small LECs are primarily interested in the build-out requirements for entities with less than 1,000,000 telephone customers. In whatever action the Commission takes on this topic, it should remember that the legislature's intent was to apply less onerous build-out requirements to smaller operators than had been mandated in statute for larger operators. More specifically, the Commission should assume that smaller operators may take longer to build out their networks than would be permitted under the build-out requirements applied to larger operators. Ultimately, each smaller operator should be given the opportunity to demonstrate that its own build-out is occurring within a reasonable time as mandated under DIVCA. The Commission must also give smaller operators the flexibility to demonstrate that their build-out is consistent with their particular economic circumstances.

With respect to other topics raised in the ACR, the Small LECs oppose the creation of any additional reporting requirements in reliance on DIVCA. The Small LECs have not identified any other of the Commission's Rules of Practice and Procedure that require amendment to conform to new procedures under DIVCA. Finally, the Small LECs approve of the ACR's tentative conclusion to refrain from adopting renewal provisions at this time.

II. BUILD-OUT REQUIREMENTS APPLIED TO SMALLER OPERATORS SHOULD RECOGNIZE THE DISTINCT TREATMENT AFFORDED TO THEM BY THE LEGISLATURE.

In adopting a new framework for the administration of video franchises, the Legislature was clearly concerned with the timing associated with build-out of video networks.¹ Although the original version of AB 2897 did not include build-out requirements, negotiations between stakeholders and legislators that led to the ultimate adoption of AB 2897 included extensive discussions regarding reasonable build-out requirements to impose on state-issued video franchise holders.

During those negotiations, the large companies, AT&T and Verizon, agreed to abide by concrete build-out requirements. In particular, Section 5890(e) establishes mandatory build-out requirements for "holders or their affiliates with more than 1,000,000 telephone customers in California." Those build-out requirements vary depending upon the extent to which the operator features fiber in its system. For a system that is predominantly fiber-based, a large operator must provide access to at least 25% of households within two years after it begins providing service and to at least 40% of households within five years.² For non-fiber-based systems, a large operator must provide access to at least 35% of households within three years after it begins providing service and to at least 50% of households within five years.³ DIVCA also outlines additional build-out requirements specific to low-income households that apply exclusively to large companies.⁴

The Small LECs participated in the stakeholder negotiations that led to the adoption of AB 2987, and Section 5890 in particular. The Small LECs made it clear in those negotiations that smaller operators should not be subject to the same, inflexible build-out requirements applied to the larger operators. The Legislature incorporated the Small LECs' concerns into the final version of AB 2897. By deferring smaller operator build-out issues to Phase II, the Commission has recognized the differing standards that appropriately apply to smaller operators. Instead of applying concrete build-out standards to smaller operators, AB 2987 adopted a more

¹ See Cal. Public Util. Code § 5890.

² Cal. Public Util. Code § 5890(e)(1).

³ Cal. Public Util. Code § 5890(e)(2).

⁴ Cal. Public Util. Code § 5890(b).

relaxed approach. Specifically, smaller operators are only required to build out facilities within a reasonable time and are not required to build out at all in geographic areas where "the cost to provide video service is substantially above the average cost of providing video service in that telephone service area."⁵ Against this backdrop, the ACR seeks further input on two compliance mechanisms relative to the build-out requirements for smaller operators: (1) safe harbors (2) case-by-case determinations.⁶

A. Small Operator Build-Out Safe Harbors.

The Small LECs do not oppose the adoption of safe harbors to demonstrate compliance with build-out requirements in DIVCA. However, the Small LECs believe that the more important consideration, given their small size and correspondingly small access to resources, is to retain the flexibility for build-out standards created by DIVCA. Accordingly, even if the Commission adopts safe harbors, that outcome should in no way undermine a franchise holder's ability to demonstrate that its build-out is occurring within a reasonable time. More particularly, any safe harbors adopted in this proceeding should not become a de facto standard for whether a smaller operator has met its build-out requirements within a reasonable time.

B. Case-by-Case Build-Out Analysis.

Given the varied characteristics even within the Small LEC group, what constitutes a "reasonable time" for build-out will differ from operator to operator. Because Section 5890(c) reserves to the Commission the authority to determine what constitutes a "reasonable time" for smaller operator build-out, the Small LECs contend that the Commission should retain flexibility in determining what constitutes a reasonable time for each individual smaller operator. Consistent with this approach, the Commission should permit each individual smaller operator to make its own showing as to why its build-out is proceeding within a reasonable time. It would be appropriate to place the burden of proof on the smaller operator to demonstrate compliance with the reasonable time requirement.

⁵ Cal. Public Util. Code § 5890(c).

⁶ See ACR, pp. 2-3.

The Small LECs do not agree with the ACR's assumption that a reasonable build-out period must be identified at the application stage.⁷ Nothing in Section 5840(e) suggests that a detailed showing regarding build-out must be included in the video franchise application.⁸ The reporting requirements in General Order 169, Section VII.C.1.(3) permit the Commission to monitor build-out progress for each individual video franchisee. If the Commission believes that a particular smaller operator is not progressing sufficiently toward a reasonable time build-out, the Commission can open an investigation into the issue, placing the burden of proof on that operator as to whether build-out is occurring within a reasonable time. Local jurisdictions could also submit complaints to the Commission if they believe a smaller operator has not satisfied the reasonable time build-out requirement.⁹ In either case, the determination of what constitutes a reasonable time will rest with the Commission, consistent with the provisions of Section 5890(c).

III. NO ADDITIONAL REPORTING REQUIREMENTS ARE NECESSARY.

The ACR pursues the question of whether the Commission needs additional, more detailed broadband and video information for enforcement of specific DIVCA provisions. As the Small LECs have contended throughout this proceeding, the Commission should adhere closely to DIVCA, and any reporting requirements contemplated under DIVCA have already been implemented in Phase I.

Tracking language from D.07-03-014, the ACR implies that legislative intent to (i) promote widespread access to technologically advanced cable and video services, and (ii) complement efforts to increase investment in broadband infrastructure and close the digital divide could constitute sufficient statutory authority to impose additional reporting requirements on video franchise holders.¹⁰ If anything, this legislative intent is an argument against additional reporting requirements. AB 2987 is a pro-competition bill. AB 2987 evidences the Legislature's determination that opening up competition in the video marketplace is the best way to promote widespread access to advanced technology and to increase investment in broadband

⁷ See ACR, p. 4.

⁸ Section 5840(e)(8) requires an expected date for deployment of service within a particular area, but it does not specify a complete build-out schedule.

⁹ Cal. Public Util. Code § 2890(g).

¹⁰ See ACR, p. 4.

infrastructure. Imposing additional reporting requirements on participants in a competitive marketplace adds compliance costs for carriers, thereby reducing resources that should more appropriately be directed at the investment intended by the Legislature.

The ACR also quotes out of context language in Section 5890(f)(4) requiring a "substantial and continuous effort" to meeting build-out requirements as a possible basis for creating additional reporting requirements.¹¹ Section 5890(f)(4) sets forth the standard for obtaining extension of the various statutory build-out requirements in DIVCA. The standard only applies in the context where an operator seeks an extension. It would be an abuse of discretion, therefore, to rely on this standard to create a reporting requirement that applies regardless of whether an operator is seeking such an extension

The ACR is also wrong to interpret a broad enforcement role for the Commission under DIVCA.¹² Section 5820(c) establishes legislative intent that the Commission only has authority to regulate video franchisees to the extent **explicitly** set forth in DIVCA. Looking to broad statements of legislative intent as a basis for authority to invoke reporting requirements beyond those explicitly created in DIVCA would violate Section 5820(c).

IV. REVISIONS TO RULES OF PRACTICE AND PROCEDURE.

The Small LECs have not identified any other Rules of Practice and Procedure that must be amended to conform to the statutory provisions of DIVCA.

V. POSTPONING ADOPTION OF FRANCHISE RENEWAL RULES.

The Small LECs do not oppose the ACR's proposal to postpone adoption of rules addressing renewal of state-issued video franchises. The Small LECs recommend, however, that such rules should be in place for at least three years prior to the expiration of initial grants of franchises. Video operators should have sufficient time to evaluate renewal requirements to provide flexibility in ensuring compliance with whatever standards are adopted. If renewal rules are not in place at least three years prior to the expiration of an operator's franchise, then the Commission should automatically extend that operator's franchise for a period equivalent to the

¹¹ See ACR, pp. 4-5.

¹² The ACR, citing D.07-03-014, asks whether additional reports are necessary for "enforcement of specific DIVCA provisions."

number of days between the three year threshold and the date that renewal rules are adopted. Providing for an automatic extension will create an incentive for the Commission to act in a timely manner and will ensure that operators are not prejudiced by the adoption of rules too close to the expiration of their franchises.

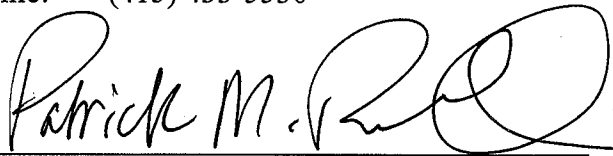
VI. CONCLUSION.

Based on the foregoing, the Commission should preserve for smaller operators the option to contend that their build-out is occurring within a reasonable time without reference to safe harbor benchmarks. The Commission should not adopt additional reporting requirements beyond those explicitly identified in DIVCA. The Small LECs are not aware of any further modification of the Commission's Rules of Practice Procedure necessary to conform the Rules to the statutory requirements of DIVCA. Finally, the Commission may delay adoption of renewal rules, but such rules should be in place sufficiently in advance of the first expiration date to provide operators with a reasonable opportunity to meet whatever renewal standards the Commission adopts.

Dated this 31st day of May, 2007, at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Noel Gielegthem, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17th Floor, San Francisco, CA 94111.

On May 31, 2007, I served the following

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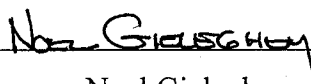
ON PHASE II ISSUES

by placing a true and correct copy thereof with the firm's mailing room personnel, for mailing in accordance with the firm's ordinary practices, addressed to the parties on the CPUC service list for Proceeding No. R. 06-10-005.

Copies were also hand delivered to Assigned ALJs Kotz and Sullivan and Assigned Commissioner Chong. Copies were also served via e-mail on those parties on the service list who provided an e-mail address.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2007, at San Francisco, California.



Noel Gielegthem

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